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Attorneys for Plaintiff Keith Murray

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEITH MURRAY,

Plaintiff,

- against -

UNITED PARCEL SERVICE OF AMERICA, INC.,
UNITED PARCEL SERVICE, INC., and UNITED
PARCEL SERVICE CO.,

Defendants.

**Index No. 08 CV 02160
(LAK)(DFE)**

**DECLARATION IN
OPPOSITION TO MOTION
SEEKING LEAVE TO AMEND
ANSWER**

UNITED PARCEL SERVICE, INC.,

Third-Party Plaintiff,

- against -

JOSE BEATO,

Third-Party Defendant.

I, ADAM RICHARDS, declare as follows:

1. My office represents Plaintiff Keith Murray in the above-captioned action. I have personal knowledge of the facts and circumstances set forth herein.
2. Annexed hereto as Exhibit A is a letter dated July 7, 2008 from Richard J. Rabin, Esq., to the Court in this matter.

3. Annexed hereto as Exhibit B is a copy of an internal UPS Corporate Security Investigation Detail Report dated June 5, 2008 that was produced to Plaintiff by UPS in response to Plaintiff's First Request for the Production of Documents in this action.

4. Annexed hereto as Exhibit C is interview notes dated February 2, 2007 that were produced to Plaintiff by UPS in response to Plaintiff's First Request for the Production of Documents in this action.

5. Annexed hereto as Exhibit D is a written statement dated February 2, 2007 that was produced to Plaintiff by UPS in response to Plaintiff's First Request for the Production of Documents in this action.

6. Annexed hereto as Exhibit E is a certified copy of a transcript of a hearing dated July 27, 2007 before Administrative Law Judge Diane Dubiac, sitting for the New York State Unemployment Insurance Board. A copy of this document was produced to Plaintiff by UPS in response to Plaintiff's First Request for the Production of Documents in this action.

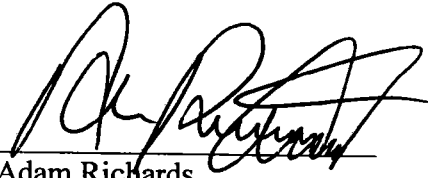
7. Annexed hereto as Exhibit F is a copy of on a Decision and Findings of Fact dated July 30, 2007 of Administrative Law Judge Diane Dubiac, sitting for the New York State Unemployment Insurance Board. A copy of this document was produced to Plaintiff by UPS in response to Plaintiff's First Request for the Production of Documents in this action.

8. Annexed hereto as Exhibit G is UPS' second request for the production of documents in this action.

9. I managed and oversaw Plaintiff's production of documents to UPS in this matter on or about June 19, 2008. Of the 108 pages of documents produced to UPS, virtually all

of them had either been produced to Plaintiff as part of the criminal case instituted against him by UPS or were documents that were already in UPS' possession.

I declare under the penalty of perjury under the laws of the United States of America and the State of New York that the foregoing is true and correct and that this Declaration was executed in New York, New York on July 23, 2008.



Adam Richards

EXHIBIT A

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

RICHARD J. RABIN
212.872.1086/fax: 212.872.1000
rrabin@akingump.com

July 7, 2008

VIA HAND DELIVERY
Honorable Lewis A. Kaplan
United States District Court, SDNY
500 Pearl Street
New York, New York 10007

Re: *Keith Murray v. United Parcel Service, Inc. et al* Index No. 08-CV-02160(LAK)

Dear Judge Kaplan:

This firm represents defendants (collectively, "UPS") in the above-referenced action. I write in response to Plaintiff's July 2, 2008 motion to compel disclosure.

Background. Plaintiff is a former UPS driver who resigned after being caught abusing his position of trust at UPS to steal cell phones from UPS vehicles. Despite his egregious breaches of his duty of loyalty, Plaintiff had the temerity to *sue UPS* alleging "false imprisonment" among other meritless claims with respect to his resignation and his subsequent arrest by the police. Later this week, UPS will be moving this Court for leave to amend its Answer to assert Counterclaims against Plaintiff for his egregious conduct.

The Pending Motion. Plaintiff's pending motion presents an issue of crucial importance to UPS: whether, and under what protections, the identity of a Confidential Informant who initially notified UPS of Plaintiff's suspicious conduct must be disclosed in discovery. Unmasking this Confidential Informant without sufficient protections would pose a direct and substantial threat to UPS's Loss Prevention efforts, including its Confidential Reward Program, through which UPS employees are encouraged to report any acts of dishonesty they witness under the assurance that "[a]ll information will be held in strict confidence." *See* Exh. 1.

Plaintiff's Failure to Meet and Confer in Good Faith. While this firm was familiar with Plaintiff's role in the improper cell phone scam at the time UPS's Initial Disclosures were filed, we did not initially realize those acts originally had been brought to light by a Confidential Informant who had approached the Company. We timely disclosed the existence of the Confidential Informant in supplemental disclosures and in UPS's Objections and Responses to Plaintiff's First Interrogatories which were served on the agreed due-date: June 18, 2008. *See* Exhs. 2 and 3. UPS made clear to Plaintiff that we would provide the identity of the Confidential Informant upon the entry of an appropriately tailored protective order. *See id.*

At first, Plaintiff suggested he was amenable to such an order, and indeed encouraged this firm to prepare one for his review. We promptly did so. *See* Exh. 4. Among the protections we sought were that (a) the Confidential Informant's identity not be revealed outside the scope of this action, (b) the Confidential Informant's identity not be revealed to personnel outside UPS's Security Department, and (c) the Confidential Informant be referred to as "Confidential

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

Honorable Lewis A. Kaplan

July 7, 2008

Page 2

Informant" (rather than by his or her name) during depositions in this matter. UPS made clear that with these limited protections, it would provide the name of the Confidential Informant, make this individual available for a deposition, and permit Plaintiff to depose UPS's Security Personnel about their interactions with this individual. *See id.*

Plaintiff voiced certain concerns with the protective order as drafted. We thus suggested changes to accommodate his concerns, including allowing Plaintiff to use Confidential Informant's name in depositions (so long as Plaintiff did not reveal the individual's role as a Confidential Informant). Plaintiff appeared to agree with this concept, and we thus prepared a revised tailored protective order for his review. *See* Exh. 5. Upon review of the revised order, however, Plaintiff promptly rejected it. *See* Exh. 6.

Despite Plaintiff's unexpected reversal of position, we continued to try to resolve this matter amicably, inquiring if there were *any* "protections that you can/will agree to" to move this matter forward. *See* Exh. 7. Plaintiff flatly rejected this overture, claiming it was "not [his] obligation to come up with appropriate guidelines here" and that "[a]nything less than" the ability to "disclose this person's name in any fashion" under the existing general confidentiality order would be unacceptable. *See* Exh. 8. In other words, all of our efforts in negotiating, preparing, and modifying the tailored protective order – at Plaintiff's urging – were in fact a waste of time, as Plaintiff was not prepared to reach a compromise on this issue.

This Court Should Deny Plaintiff's Motion and Issue a Carefully Tailored Protective Order. Plaintiff's motion to compel should be denied. Instead, this Court should utilize its broad authority to fashion protective orders under Fed. R. Civ. P. 26(c) to issue the carefully tailored protective order UPS has proposed. *See* Exh. 5. This order would provide Plaintiff and his counsel with the identity of the Confidential Informant, permit Plaintiff to depose the Confidential Informant, and permit Plaintiff to depose UPS personnel about the Confidential Informant (utilizing the Informant's name) so long as Plaintiff did not reveal the individual's role as a Confidential Informant. Such an approach would permit the Plaintiff to obtain appropriate discovery, while also not unduly undermining UPS's Confidential Reward Program or its broader Loss Prevention efforts.

We are available to address this matter more fully at the Court's convenience.

Respectfully Submitted,



Richard J. Rabin

Encl.

cc: Adam Richards, Esq. (via Overnight Delivery w/ encl.)

EXHIBIT B



Corporate Security

Investigation Detail Report

Print Date: 05 Jun 2008

Name: Keith Murray Termination **Status:** Closed
Number: 07-NYC-0449 **System Date:** 04 Sep 2007
Investigator: Tom Cleary **Age in Days:** 275
Created By: Tom Cleary
Creation Notes: (None)
Status Comments: (None)

Associated Incidents:	1
Property Seizures:	0
Disciplinary Actions:	1
Grievance Records:	1
Prosecutive Actions:	1
Law Enforcement Contacts:	0
Observers:	0
Comment Records:	1

	Records	Costs	Recoveries
Total Package Losses:	0	\$0.00	\$0.00
Total Property Losses:	0	\$0.00	\$0.00
Total Frauds:	0	\$0.00	\$0.00
Total Investigative Costs:	0	\$0.00	N/A
Total Sources/Rewards:	0	\$0.00	N/A
Grand Totals:	0	\$0.00	\$0.00

Summary: (None)

The information contained in this report includes proprietary and confidential information that may be subject to attorney-client privilege and is intended only for the use of authorized personnel. Unauthorized use, dissemination, distribution, or copying of this information is strictly prohibited.

Incident

Incident Date:	02 Feb 2007	Incident Time:	14:00
System Date:	04 Sep 2007	SLIC:	1021 - MANHATTAN NORTH-NO.
Creator:	Tom Cleary	Location:	on road
Recommended Investigator:	Tom Cleary	Status:	Closed - 07-NYC-0449
Incident Type:	Package Theft	Value (USD):	\$5,910.00
Local Value:	5,910.00	Currency Type:	US Dollar

Reported By:	Tom Cleary	Title:	Security Supervisor
		Phone:	5-220-6168

Description:

1021 Service Provider Keith Murray was arrested for his involvement in the delivery of fraudulently ordered cell phones. on 12-29-06, 1-5-07 and 2-2-07, Murray was observed releasing a total of 11 phones to an individual later identified as Jose Beato. Beato was observed on 2-2-07 passing cell phones over the counter at G&P Cellular, located at 2440 Amsterdam Ave, New York, Ny. Murray, Beato and the proprietor of the store were all arrested.

Subject - KEITH MURRAY

Type:	UPS - Hourly	Employee ID:	1852702
Address:	2116 Crotona PKWY #3D Bronx, NY 10460	Telephone:	9177215497
Status:	Full-Time	Job Description:	02 Driver/Helper
Operation Type:	02 Package	Sort Type:	04 Days
Job Type:	Full-Time	Employment Date:	15 Aug 2005
Union Type:	Teamsters	Job Date:	15 Aug 2005
Comments:	(None)		

Interviews

Interview Type:	04 Accusatory	Interviewer:	Tom Cleary
Interview Date:	02 Feb 2007		
Summary:	Murray acknowledged bypassing standard UPS procedures in the delivery of cell phones over the last year to Jose. Murray chose to resign from UPS for personal reasons.		

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Disciplinary Actions

Action Date: 02 Feb 2007
Action Type: Resigned **Offense Type:** Package Theft
Discipline Comments: Resigned for personal reasons, signed statement and seperation form obtained from Murray.
Grievance Date: 23 Feb 2007
Grievance Comments: Murray claims that he was tricked into signing the union waiver of representation, the statement form and the seperation form. Labor manager Tom Schultz upheld the discharge / resignation and the union filed for arbitration.

Prosecutive Actions

Action Date: 02 Feb 2007
Arresting Officer: (None) **Case Number:** (None)
Complainant: Det. Figueroa **Council Consulted:** (None)
Charges: Grand Larceny
Arrest Comments: (None)
Result Date: 21 Aug 2007 **Result:** Dropped
Sentencing Comments: Criminal Charges dropped as per Manhattan ADA James Schiff. Unable to prove that Murray had knowledge of criminal acquisition of the items.

Comments

Comment Date: 04 Sep 2007
Comment Type: Investigator Note **Submitted By:** Tom Cleary
Comment: pending arbitration as of 9-4-07

Investigation Appraisal

Date Closed: 02 Oct 2007 **Result:** Positive
Closure Comments: see file
Critique: (None)

Was CCTV equipment used in this investigation?

No

What changes were made to prevent this type of incident from happening again, and who is responsible for the implementation and maintenance of these changes?

na

What did you learn through this investigation that will help you or others when investigating similar incidents in the future?

na

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Timeliness:	N/A
Completeness:	N/A
Resolution:	N/A
Professionalism:	N/A
Total:	N/A
Overall:	N/A

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EXHIBIT C

no shop steward present
Tom Cleary, Julian Pedra

2/2/07

1:30 pm.

- Cleary introduced himself & myself to dinner.
- Explained that this is an official discussion. ~~regard~~
- Explained his right to have a shop steward present and was questioned as to whether or not he wanted a shop steward present. Mr Murray was willing to speak without a shop steward. He agreed a waiver was told that he can at anytime stop and request his shop steward.
- Informed Mr. Murray about investigation regarding deliveries made on his route. He was shown a picture of suspect, ^{who he gives packages #10} whom he identified as Jose. He explained that Jose shows him ID and list of tracking #'s on his route and he gives him the packages listed. Mr Murray says Jose's address is # 601 W 190th St Apt #52 or #54. ^{from house collection} Mr Murray is unsure of Jose's last name, he gave possible names ~~Baniao~~ or Baes.
- Murray was again informed of the seriousness of the discussion and the need for him to speak the truth during the discussion.
- Jose signs the board when he gets the packages.
- Mr Murray gave Jose 5 pkg with 5 different addresses.
- ~~Mr Murray~~

CONFIDENTIAL
UPS 000040

M. M. Mr Murray.

Mr. Murray states he does not receive any money for the pkg except ~~an~~ occasional tips of \$5- or \$10. He says he gets tips from many customers.

Mr Murray was asked what are delivery procedures
He states that as long as someone has a letter
tracking #s that he thinks it is ok to give
them to the person. Even if that person
approached them on street and to name not listed in the boxes

2. ~~Dr~~ Dr. Ralph Carter from centuries ^{ago} long time ago told him that their procedures were ok based on a peculiar situation ^{in the past} that ^{had} ^{slaved}

Mr Murray ~~admitted~~ acknowledged that he should verify that the ID's match the box name on the box(es) that he is delivering.

He was shown pictures of Suspect and picture
of a bag of cell phone that he got from M.M.

Says he did not receive any money for pieces today he gave to Joe today. He claims he does not get anything for them. He just delivers them. He delivered 6 pkgs today 2/2/07.

U.M. State that Jose sometimes calls him on his cell phone and gives him a list of the tracking #'s he is looking for.

Says he bought his ^{personal phone} phone at the same stop. He lives on the property.

646 796 5788 - Jose's ~~cell~~ phone# in m.m. cell
phone from ^{return} call made to Jose bday 4/1/07

CONFIDENTIAL
UPS 000041

- Clearly there are 11 phones that have been delivered to Joe; the value of the first 5 was \$2400. Today the 1st 5 is approx \$5000.00 or more.
You have the opportunity to help yourself by telling the truth. We have enough to force you or lock you up.

nm. I am not involved in any fraudulent activities. I am telling everything I know. I am sorry all you are asking for.
clears You are involved because you delivered the pks to the settlement by bypassing our procedures.

clear M.M. was asked to put in writing his delivery procedure with the suspect.

clear: I saw you give him pks 2 Friday in a row, and he came to your truck 2 times today.

EXHIBIT D

REDACTED

Statement of Keith Z. Murray

Social Security Number _____

Date 2, 2, 07

Time _____

Page ____ of ____
Address 2116 Crotona PkwyBronx NY 10460Phone 917-221-5497

Work Area _____

I, Keith Murray, voluntarily make the following statement to _____, knowing that no threats or

promises have been made to me.

Today Jose came up to me after calling me to tell me tracking numbers of items he ordered. The reason why these packages was given to customer was because he tells me tracking # for packages; I went in side truck got boxes, he came to the truck + signed for each one, at the truck; I didn't get any money from him for anything as we are in anything together this isn't the first time of him getting packages from me, because he was a Supers helper on 188 St. I've gotten to trust him, because I was told by Management to get to know the Supers, there helpers + people

Writer's Initials _____

CONFIDENTIAL
UPS 000009

Page ____ of ____

to leave packages with to keep and giving numbers down so yes I can say I've made a mistake do to ~~trusting that~~ no problem coming up in the pass I would scan + let him sign for packages not because we are in this together. This has been happening from when I started doing this route for about a year he would come up to truck, 2 maybe 3 times a week I would deliver packages to him mostly cell phones not do to any deal we have together. I realized that his T.D. didn't match the packages he got from me, that a mistake I've made do to trusting customer.

I have had this statement consisting of 2 page(s), each of which I have initialed, read to me and I have read myself. I agree to the truth and accuracy of the facts contained in the statement.

This statement was completed at 3:10p m, on the 2 day of Feb, 2007.
(time) (day) (month) (year)

Keith Murray
Signature of person giving voluntary statement

JD
Witness

2, 2, 07
Date Time

Writer's Initials KM

CONFIDENTIAL
UPS 000010

EXHIBIT E

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE
ADMINISTRATIVE LAW JUDGE SECTION

In the Matter of the Liability for
Unemployment Insurance Contributions
under Article 18 of the Labor Law of:

Keith L. Murray
Employer - Appellant

Employer - United Parcel Service Inc.

M. Patricia Smith,
Commissioner of Labor

Case No: 007-13959
Appeal Board No.: 538646

Date of Hearing: July 27th 2007
Place of Hearing: New York
Before: Diane L. Dubiac
Administrative Law Judge
Transcribed by: Cinzia Lister

Appearances

Cl: Keith L. Murray
Emp: United Parcel Service Inc.
Emp Rep: Tom Cleary, Security Rep.

CERTIFIED TO BE A TRUE AND ACCURATE COPY

Jason Myers
ACCESS OFFICER

RECEIVED
U.I. APPEAL BOARD
TROY, NY
SEP 04 2007

1 Murray - Testimony

2 ALJ DUBIAC: This is a hearing in the
3 case of Keith Murray. 00713959. The hearing
4 is in New York City on July 27th, 2007. It
5 was scheduled for 2:30. It's now 2:26.

6 Present is the claimant and your name sir?

7 MR. CLEARY: Tom Cleary. C-L-E-A-R-Y.

8 ALJ DUBIAC: And what's your title?

9 MR. CLEARY: Security representative.

10 ALJ DUBIAC: My name is Diane Dubiac.
11 I'm the administrative law judge assigned to
12 this hearing. I am independent and
13 impartial. I have no connection to the
14 branch of the department of labor that issued
15 the initial determination which held the
16 claimant eligible to receive benefits. I'd
17 like to refer to that determination first
18 identified as (inaudible) benefits reason.
19 The claimant resigned in lieu of termination
20 following an investigation of alleged
21 wrongdoing. He has been arrested and charged
22 with a felony but he has not been convicted.
23 You have not provided any evidence of
24 deliberate wrongdoing on his part. The
25 employer requested a hearing and objected

1 Murray - Testimony

2 contending that the claimant lost his
3 employment due to misconduct so the issue is
4 whether or not the claimant did lose his
5 employment by reason of misconduct. The
6 hearing will proceed as follows: I will take
7 the testimony of the parties and witnesses
8 under oath or affirmation. After each party
9 or witness testifies, I will offer the
10 opposing party an opportunity to cross
11 examine by asking questions. All parties may
12 present witnesses and records or ask that
13 they be subpoenaed and at the end of the
14 testimony, each of the parties can make a
15 closing statement. No decision will be made
16 by me in person here today. My written
17 decision will be mailed to each of the
18 parties within 10 days. I'm going to start
19 the hearing with the employer's testimony
20 followed by cross examination. Then I'm
21 going to take the claimant's testimony
22 followed by cross examination. All right.
23 Mr. Murray, do you understand what I've
24 explained?

25 MR. MURRAY: Yes.

1 Murray - Testimony

2 ALJ DUBIAC: Are you ready to proceed
3 with the hearing?

4 MR. MURRAY: Yes.

5 ALJ DUBIAC: Mr. Cleary, do you
6 understand?

7 MR. CLEARY: Yes.

8 ALJ DUBIAC: Are you ready to proceed?

9 MR. CLEARY: Yes.

10 ALJ DUBIAC: Would you raise your right
11 hand? Do you swear or affirm to tell the
12 truth?

13 MR. CLEARY: Yes.

14 ALJ DUBIAC: Okay. Put your hand down.
15 Would you state your name and your title for
16 the record once more?

17 MR. CLEARY: Tom Cleary. Security
18 representative.

19 ALJ DUBIAC: Okay. And this is United
20 Parcel Service? Would you say it's a
21 transportation company?

22 MR. CLEARY: Yeah.

23 ALJ DUBIAC: Okay. What position did
24 the claimant hold?

25 MR. CLEARY: Service provider. Delivery

1 Murray - Testimony

2 driver.

3 ALJ DUBIAC: And about how long did he
4 work for your company?

5 MR. CLEARY: Uh, give me a minute. I
6 don't recall.

7 ALJ DUBIAC: Mm hm.

8 MR. CLEARY: A vicinity of two years.

9 ALJ DUBIAC: 2 did you say? About 2?

10 MR. CLEARY: I believe so.

11 ALJ DUBIAC: Okay. What's the last day
12 that he worked?

13 MR. CLEARY: February 2nd

14 ALJ DUBIAC: '07?

15 MR. CLEARY: Yes ma'am.

16 ALJ DUBIAC: Was it full time or part
17 time?

18 MR. CLEARY: Full time.

19 ALJ DUBIAC: Was he a member of a union?

20 MR. CLEARY: Yes.

21 ALJ DUBIAC: And about how much was he
22 paid at the time he stopped working there?

23 MR. CLEARY: Uh, I don't know if he made
24 full pay yet. Have you reached...

25 ALJ DUBIAC: Okay. You can't ask any

1 Murray - Testimony

2 questions of the claimant now. You're on
3 your own for testifying at this point.

4 MR. CLEARY: I don't know.

5 ALJ DUBIAC: Okay. Um, was he paid by
6 the hour?

7 MR. CLEARY: Yes.

8 ALJ DUBIAC: Did he quit or was he
9 discharged?

10 MR. CLEARY: He resigned for personal
11 reasons.

12 ALJ DUBIAC: On what day did he resign?

13 MR. CLEARY: February 2nd.

14 ALJ DUBIAC: '07. Correct?

15 MR. CLEARY: Correct.

16 ALJ DUBIAC: All right. Did he give any
17 notice that he'd be leaving on that day?

18 MR. CLEARY: No.

19 ALJ DUBIAC: Did he tell anybody on that
20 day that he was resigning?

21 MR. CLEARY: Yes.

22 ALJ DUBIAC: And did he give a written
23 resignation?

24 MR. CLEARY: Yes.

25 ALJ DUBIAC: Do you have a copy of that

1 Murray - Testimony

2 written resignation?

3 MR. CLEARY: Yes. I do.

4 ALJ DUBIAC: Let me see it.

5 MR. CLEARY: (inaudible). I'm sorry.

6 ALJ DUBIAC: Thank you. Okay. This is
7 the resignation. It's a separation form.
8 It's dated 2/2/07. Okay. Is this signed by
9 the claimant as far as you know?

10 MR. CLEARY: Yes.

11 ALJ DUBIAC: Any objection or comment to
12 its receipt into evidence?

13 MR. CLEARY: No.

14 ALJ DUBIAC: Okay. I'm showing it to
15 the claimant. Any objection or comment to
16 its receipt into evidence?

17 MR. MURRAY: No.

18 ALJ DUBIAC: I have a document. It's
19 dated February 2nd '07. It's a one page
20 separation form. It's marked exhibit 1.
21 It's received into evidence. Was continuing
22 work available for the claimant if he had not
23 resigned?

24 MR. CLEARY: Yes.

25 ALJ DUBIAC: He could have stayed

1 Murray - Testimony

2 working there?

3 MR. CLEARY: Oh, no. That's, he would
4 have been discharged.

5 ALJ DUBIAC: So the answer is no?

6 MR. CLEARY: No.

7 ALJ DUBIAC: Okay. Why not?

8 MR. CLEARY: Because of his involvement
9 in a scheme to obtain and deliver (inaudible)
10 ordered cell phones.

11 ALJ DUBIAC: A scheme to uh, what was
12 the first word? Obtain?

13 MR. CLEARY: Obtain.

14 ALJ DUBIAC: And sell?

15 MR. CLEARY: Deliver.

16 ALJ DUBIAC: And deliver per sale?
17 Deliver per sale? Is that what you said?

18 MR. CLEARY: Um...

19 ALJ DUBIAC: Just repeat what you said.
20 His participation in a scheme.

21 MR. CLEARY: To obtain and deliver
22 fraudulently ordered cell phones.

23 ALJ DUBIAC: Okay. So did the claimant,
24 was the claimant given the choice of
25 resigning instead of being discharged?

1 Murray - Testimony

2 MR. CLEARY: Yes.

3 ALJ DUBIAC: Okay. And when was this
4 that he was given that choice?

5 MR. CLEARY: February 2nd.

6 ALJ DUBIAC: Did you give him the choice
7 yourself?

8 MR. CLEARY: Yes. I did.

9 ALJ DUBIAC: Okay. And um was he going
10 to be discharged right then and there if he
11 didn't resign?

12 MR. CLEARY: Yes.

13 ALJ DUBIAC: All right.

14 MR. CLEARY: There is a follow up
15 hearing with the union though.

16 ALJ DUBIAC: Okay. Um, was it the
17 employer's intent to discharge him right
18 away?

19 MR. CLEARY: Yes.

20 ALJ DUBIAC: Okay. And uh when is it
21 contended that this alleged scheme took
22 place?

23 MR. CLEARY: Over the course of several
24 months, we have, we have evidence from three
25 specific days.

1 Murray - Testimony

2 ALJ DUBIAC: No. I just need, over the
3 course of several months? The period?

4 MR. CLEARY: Over the course, well, I'll
5 say from December through February. December
6 of '06.

7 ALJ DUBIAC: December '06.

8 MR. CLEARY: Through February, the
9 beginning of February of '07.

10 ALJ DUBIAC: February '07. And what
11 leaves the employer to believe the claimant
12 did this?

13 MR. CLEARY: There was a pattern of
14 deliveries with Sprint cell phones that
15 matches prior cases where people have been
16 approached on the road by people attempting
17 to uh fraudulently obtain cell phones and
18 the...

19 ALJ DUBIAC: Wait a minute. Say that
20 again. There's a pattern.

21 MR. CLEARY: His pattern of deliveries
22 indicates fraudulent deliveries.

23 ALJ DUBIAC: His? The claimant's?

24 MR. CLEARY: Yes.

25 ALJ DUBIAC: In what way do they

1 Murray - Testimony

2 indicate fraudulent deliveries?

3 MR. CLEARY: There will be multiple
4 packages to different addresses all delivered
5 at the same time to one individual.

6 ALJ DUBIAC: Multiple packages delivered
7 same time to one individual. So why does
8 this indicate wrongdoing?

9 MR. CLEARY: Because there are certain
10 delivery guidelines that our employees are
11 expected to follow.

12 ALJ DUBIAC: Such as?

13 MR. CLEARY: Such as we deliver to
14 addresses. When somebody comes up to the
15 package car, we call them package cars, when
16 somebody comes up to the delivery vehicle in
17 the street looking for a package, they need
18 to supply identification that matches the box
19 in order for the box to be released to that
20 person.

21 ALJ DUBIAC: Yeah. So what does that
22 have to do with anything?

23 MR. CLEARY: There were 6 uh different
24 packages for 6 different addresses released
25 to one individual without obtaining proper

1 Murray - Testimony

2 i.d. for each of the packages.

3 ALJ DUBIAC: And what leads the employer
4 to believe that, that that happened?

5 MR. CLEARY: It was observed on video
6 tape and matched up with his delivery
7 records.

8 ALJ DUBIAC: Well, was the claimant seen
9 on video tape giving the packages to this
10 individual?

11 MR. CLEARY: Yes.

12 ALJ DUBIAC: He was?

13 MR. CLEARY: Yes.

14 ALJ DUBIAC: Did you see the tape?

15 MR. CLEARY: Yes.

16 ALJ DUBIAC: Do you have the tape with
17 you?

18 MR. CLEARY: Yeah. It's a DVD.

19 ALJ DUBIAC: Um, you have a computer to
20 play it back on?

21 MR. CLEARY: I do not. You can have it
22 if you need it for your file or...

23 ALJ DUBIAC: No. I'm not going to take
24 it right now. You don't have a laptop to
25 play it back on?

1 Murray - Testimony

2 MR. CLEARY: No.

3 ALJ DUBIAC: Okay. Um, and what did you
4 see in the video?

5 MR. CLEARY: I saw an individual that uh
6 we now know, his name is Jose I believe come
7 up to the package car on 3 separate occasions
8 video taped.

9 ALJ DUBIAC: Wait. To who's package
10 car?

11 MR. CLEARY: To Keith Murray's.

12 ALJ DUBIAC: Package car. Okay.

13 MR. CLEARY: In the vicinity of 188th
14 Street or 190th Street in Autoban Avenue in
15 upper Manhattan.

16 ALJ DUBIAC: Mm hm. Okay. What
17 happened?

18 MR. CLEARY: We observed this guy. I
19 only know his name is Jose.

20 ALJ DUBIAC: Mm hm.

21 MR. CLEARY: Uh, we saw him leaving the
22 package car in the possession of uh packages
23 that appeared to be cell phone packages.

24 ALJ DUBIAC: You could tell that from
25 the tape what was in the packages?

1 Murray - Testimony

2 MR. CLEARY: Yeah. They're distinctive
3 looking. They're the size, I've been doing
4 this for 19 years. They are distinctive
5 looking. They have specific labels and tape.

6 ALJ DUBIAC: They were what? DVD's Is
7 that what you said? What were they? I'm
8 sorry.

9 MR. CLEARY: Cell phones.

10 ALJ DUBIAC: Cell phones. I'm sorry.

11 MR. CLEARY: Cell phones.

12 ALJ DUBIAC: Okay. You're absolutely
13 certain there were cell phones in these
14 packages?

15 MR. CLEARY: Yes.

16 ALJ DUBIAC: Without a doubt?

17 MR. CLEARY: Yes.

18 ALJ DUBIAC: Could it have been anything
19 else?

20 MR. CLEARY: No.

21 ALJ DUBIAC: How can you make that
22 statement?

23 MR. CLEARY: I verified that information
24 with Sprint security.

25 ALJ DUBIAC: That what?

1 Murray - Testimony

2 MR. CLEARY: That the content of the
3 boxes were cell phones.

4 ALJ DUBIAC: How would they know what
5 was given to this individual?

6 MR. CLEARY: The tracking number on the
7 package that Mr. Murray recorded is matched
8 up to a specific shipment.

9 ALJ DUBIAC: So the tracking number the
10 claimant had on a sheet of some sort or...

11 MR. CLEARY: Each package in our system
12 has a unique tracking number which...

13 ALJ DUBIAC: Yeah but where is the
14 number? Does the claimant have the number?
15 Is it in a computer? Where is it?

16 MR. CLEARY: The tracking number is on
17 the package label and he records it in his,
18 if you've seen the UPS driver, they carry
19 that little hand held computer.

20 ALJ DUBIAC: Okay.

21 MR. CLEARY: He scans the bar code on
22 the tracking label.

23 ALJ DUBIAC: Okay. So he scanned the
24 packages?

25 MR. CLEARY: Correct.

1 Murray - Testimony

2 ALJ DUBIAC: And it was checked with
3 Sprint that these were cell phones?

4 MR. CLEARY: Correct.

5 ALJ DUBIAC: Did you yourself check it?

6 MR. CLEARY: Yes.

7 ALJ DUBIAC: Okay. So what was wrong
8 with him giving the packages to this person?

9 MR. CLEARY: Uh, Sprint confirmed that
10 the packages were ordered under fraudulent
11 circumstances.

12 ALJ DUBIAC: How would they know that?

13 MR. CLEARY: The packages were insurance
14 replacement phones. Uh, the account holders
15 were from all over the country with \$50
16 charges that the account holders were charged
17 to ship the insurance replacement phone
18 (inaudible). The charges were denied by the
19 account holders. They called up and said I
20 never ordered a replacement phone.

21 ALJ DUBIAC: Do you have any proof of
22 this?

23 MR. CLEARY: Uh, no. I don't. I don't.

24 ALJ DUBIAC: Is it just conversations
25 with Sprint?

1 Murray - Testimony

2 MR. CLEARY: Yes.

3 ALJ DUBIAC: Do you have anybody here to
4 testify from Sprint?

5 MR. CLEARY: No.

6 ALJ DUBIAC: Now, uh what leads the
7 employer to believe that the claimant knew of
8 this whole scheme?

9 MR. CLEARY: We train our people to do a
10 job in a certain way and uh our employees are
11 trained to deliver to addresses and they're
12 not supposed to deliver federal packages to
13 one individual in the street to several
14 different addresses without you know, it's a
15 pattern of delivery (inaudible).

16 ALJ DUBIAC: When you say different
17 addresses, you mean there were different
18 addresses on the packages?

19 MR. CLEARY: Correct.

20 ALJ DUBIAC: So he delivered packages to
21 one individual who was on the street and they
22 were addressed to different addresses?

23 MR. CLEARY: Correct.

24 ALJ DUBIAC: Okay. Okay. And was the
25 claimant confronted about this by anybody?

1 Murray - Testimony

2 MR. CLEARY: The day he was arrested.

3 ALJ DUBIAC: Did you yourself confront
4 him?

5 MR. CLEARY: Yes.

6 ALJ DUBIAC: And what did he say?

7 MR. CLEARY: He claimed he was just
8 delivering the packages and he was trying to
9 do his job and that the individual...

10 ALJ DUBIAC: So he denied wrongdoing?

11 MR. CLEARY: Correct.

12 ALJ DUBIAC: Okay. What did he say
13 about giving the uh packages to this person
14 on the street?

15 MR. CLEARY: He said that this gentleman
16 was a uh used to be a supers helper at some
17 point of some building in the general
18 vicinity.

19 ALJ DUBIAC: Mm hm.

20 MR. CLEARY: So he thought it was okay
21 to release these packages to him. He
22 acknowledged that he...

23 ALJ DUBIAC: Wait just a second. So
24 you're saying because um he um released the
25 packages to this person without delivering

1 Murray - Testimony

2 them to the actual address, that um he should
3 have known or the employer is assuming that
4 he had knowledge of this fraudulent scheme?

5 MR. CLEARY: Yes.

6 ALJ DUBIAC: All right. And did he say
7 uh how it was arranged that he was giving
8 these cell phones to this particular person?

9 MR. CLEARY: He said that Jose would
10 contact him either with a list of names or
11 tracking numbers and let him know what he was
12 expecting or when he approached the vehicle,
13 he would say what he was looking for.

14 ALJ DUBIAC: So what leads the employer
15 to believe that the claimant knew that this
16 was all part of a scheme?

17 MR. CLEARY: Because that practice
18 bypasses uh approved standard operating
19 procedure. It's not an acceptable delivery
20 procedure.

21 ALJ DUBIAC: Mm hm. Okay. So you're
22 saying that means he was guilty?

23 MR. CLEARY: And that coupled, and that
24 coupled...

25 ALJ DUBIAC: Is that what you're saying.

1 Murray - Testimony

2 Wait. I don't have an answer to the
3 question. You're saying that implies that he
4 knew that there was something wrong going on?

5 MR. CLEARY: Correct.

6 ALJ DUBIAC: Okay. All right. Did the
7 employer ever observe any cash being
8 exchanged or any money being exchanged for
9 these phones?

10 MR. CLEARY: Did not. No.

11 ALJ DUBIAC: Okay. How many phones are
12 we talking about?

13 MR. CLEARY: Uh, a total of 11.

14 ALJ DUBIAC: 11 altogether.

15 MR. CLEARY: That we have proved.

16 ALJ DUBIAC: The whole scheme was only
17 11.

18 MR. CLEARY: Well, that we actually have
19 on video tape. The scheme itself is dozens.
20 I don't have an exact number.

21 ALJ DUBIAC: Okay. So we're talking
22 dozens and on video tape, you observed 11?

23 MR. CLEARY: Yes.

24 ALJ DUBIAC: That you could tell from
25 looking at the video tape. They're 11?

1 Murray - Testimony

2 MR. CLEARY: Uh, we compared his
3 delivery records with the video tape and
4 determined that there were 11 packages.

5 ALJ DUBIAC: Okay. With tracking
6 numbers? Is that how it was done?

7 MR. CLEARY: Yes.

8 ALJ DUBIAC: Well, didn't he have other
9 deliveries that day though?

10 MR. CLEARY: Yes he did but each
11 tracking number is specific. You can tell
12 from a tracking number what shipper it is.
13 The first couple of digits in the tracking
14 number identify what shipper it is.

15 ALJ DUBIAC: Well, how would you know
16 from looking at the tape which ones were
17 given to this individual?

18 MR. CLEARY: From looking at the tape.

19 ALJ DUBIAC: How would that tell you?

20 MR. CLEARY: The time on the video tape
21 versus the time on his records.

22 ALJ DUBIAC: Okay. So he put for the
23 tracking number...

24 MR. CLEARY: And the (inaudible).

25 ALJ DUBIAC: He put the time of the

1 Murray - Testimony

2 delivery?

3 MR. CLEARY: It's automatically
4 recorded.

5 ALJ DUBIAC: Right.

6 MR. CLEARY: The time.

7 ALJ DUBIAC: Does he scan them you're
8 saying?

9 MR. CLEARY: Yes.

10 ALJ DUBIAC: Because he scanned them?
11 Okay. And the time correlated to the video
12 tape?

13 MR. CLEARY: Correct.

14 ALJ DUBIAC: Where was this video taken?
15 How was it taken? Was there a camera on the
16 delivery truck?

17 MR. CLEARY: Covert Surveillance.
18 Covert Surveillance. A uh surveillance
19 company that we hire for investigations.

20 ALJ DUBIAC: Oh, okay. All right. But
21 the claimant admitted to you that he did give
22 this individual the tapes?

23 MR. CLEARY: The packages.

24 ALJ DUBIAC: The packages. I'm sorry.

25 MR. CLEARY: Yes.

1 Murray - Testimony

2 ALJ DUBIAC: With the cell phones?

3 MR. CLEARY: He didn't say they were, he
4 may have said they were cell phones. I don't
5 recall. He acknowledges that he did in fact
6 give Jose these packages. Yes.

7 ALJ DUBIAC: Okay. The 11. Were they
8 all in one book. No. They were different.
9 Different addresses you said?

10 MR. CLEARY: 11 different parcels.

11 ALJ DUBIAC: 11 different. I'm sorry?

12 MR. CLEARY: 11 different parcels. 11
13 different cartons.

14 ALJ DUBIAC: Parcels. 11 different
15 addresses?

16 MR. CLEARY: Yes.

17 ALJ DUBIAC: Okay. Well, would the
18 claimant be able to recognize also that
19 they're cell phones as you indicated that you
20 could tell from the packaging?

21 MR. CLEARY: Most likely with his uh, I
22 mean he'd been on the job for a couple of
23 years.

24 ALJ DUBIAC: Okay.

25 MR. CLEARY: I would venture a guess

1 Murray - Testimony

2 that he could.

3 ALJ DUBIAC: All right. Were any
4 criminal charges pressed, filed against the
5 claimant?

6 MR. CLEARY: Yes.

7 ALJ DUBIAC: And did the employer file
8 them?

9 MR. CLEARY: Uh, we signed a claimant.
10 It's a uh...

11 ALJ DUBIAC: It's okay. You can answer
12 my question. And what happened to the uh,
13 was he arrested?

14 MR. CLEARY: Yes.

15 ALJ DUBIAC: And what was the outcome?

16 MR. CLEARY: Uh, the next hearing date
17 in August.

18 ALJ DUBIAC: Still pending?

19 MR. CLEARY: Still pending.

20 ALJ DUBIAC: All right. All right.
21 There's a statement in the file. It's
22 appears to be claimant's TCC413.9. It says
23 the proceedings are sealed and dismissed as
24 of August 23. Do you disagree with that?

25 MR. CLEARY: It's not August 23 yet.

1 Murray - Testimony

2 ALJ DUBIAC: All right. But are they
3 scheduled to be dismissed do you know?

4 MR. CLEARY: Not that I know of.

5 ALJ DUBIAC: Okay. It says um also that
6 there's a pending arbitration. Is that true?

7 MR. CLEARY: Yes.

8 ALJ DUBIAC: Was there any binding
9 arbitration decision?

10 MR. CLEARY: No.

11 ALJ DUBIAC: As far as you know?

12 MR. CLEARY: No.

13 ALJ DUBIAC: Okay. Just because I've
14 read from this document, I'd like to receive
15 it into evidence. It's a two page document
16 and it's dated uh June 1, '07. I'm showing
17 it to the employer's witness. Any objection
18 or comment to its receipt into evidence?

19 MR. MURRAY: No. Where does it say on
20 here though...

21 ALJ DUBIAC: The second page. The last
22 paragraph I think it is.

23 MR. CLEARY: Sealed and dismissed as of
24 8/23.

25 MR. MURRAY: Okay.

1 Murray - Testimony

2 ALJ DUBIAC: Any objection or comment to
3 its receipt?

4 MR. MURRAY: No.

5 ALJ DUBIAC: I'm showing it to the
6 claimant. Any objection or comment to its
7 receipt into evidence?

8 MR. MURRAY: No ma'am.

9 ALJ DUBIAC: The document is marked
10 exhibit 2. It's received into evidence. All
11 right. Mr. Murray, did you want to ask Mr.
12 Cleary any questions and I'm talking about
13 questions now? It's not your turn to testify
14 just yet. Did you want to ask him anything?

15 MR. MURRAY: No.

16 ALJ DUBIAC: Okay. Would you raise your
17 right hand? Do you swear or affirm to tell
18 the truth?

19 MR. MURRAY: Yes.

20 ALJ DUBIAC: Okay. You can put your
21 hand down. Just state your name.

22 ALJ DUBIAC: Keith Murray.

23 ALJ DUBIAC: You heard the background
24 testimony and I'm only talking to the
25 background now as to the kind of company this

1 Murray - Testimony

2 was, your position there, the period of your
3 employment, the last day that you worked.

4 You were full time. You were a union member
5 and you were paid by the hour. Do you agree
6 or disagree with the background testimony?

7 MR. MURRAY: Yes. I agree.

8 ALJ DUBIAC: And what were you paid by
9 the hour?

10 MR. MURRAY: \$16.80.

11 ALJ DUBIAC: Did you quit or were you
12 discharged?

13 MR. MURRAY: I was forced to resign.

14 ALJ DUBIAC: Okay. And was that on
15 February 2nd '07?

16 MR. MURRAY: On the 2nd.

17 ALJ DUBIAC: Yeah. Okay. And this is
18 your resignation letter or note?

19 MR. MURRAY: Yes.

20 ALJ DUBIAC: Exhibit 1? Okay. And uh
21 did you choose to resign instead of being
22 discharged?

23 MR. MURRAY: Uh, well the way it was
24 presented to me, yes, because...

25 ALJ DUBIAC: All right.

1 Murray - Testimony

2 MR. MURRAY: Because he said that if I
3 didn't resign, then he would fire me for
4 grand larceny.

5 ALJ DUBIAC: Okay. And um was it
6 explained to you why you were going to be
7 discharged?

8 MR. MURRAY: Um, well, basically...

9 ALJ DUBIAC: Yes or no? Did he explain
10 or did anybody explain why you were going to
11 be discharged?

12 MR. MURRAY: Yes.

13 ALJ DUBIAC: Okay. Did you participate
14 in any kind of a scheme to obtain um cell
15 phones and to deliver fraudulently ordered
16 cell phones?

17 MR. MURRAY: No.

18 ALJ DUBIAC: All right. Did you uh
19 while performing your route, um sometime
20 between December '06 to the beginning of
21 February '07, uh did you give uh deliver cell
22 phones to a person named Jose?

23 MR. MURRAY: Yes.

24 ALJ DUBIAC: All right. And were these
25 cell phones that were in packages that were

1 Murray - Testimony

2 addressed to different addresses?

3 MR. MURRAY: Um, to the people in the
4 area. Yes.

5 ALJ DUBIAC: Okay. And why did you give
6 them to Jose?

7 MR. MURRAY: Well, during the situation
8 that was actually going on, I was being
9 really pressured by management company as in
10 getting the packages off. I was told by them
11 that I can get to know the supers, get to
12 know the helpers. Get the packages off and
13 that's all I was doing.

14 ALJ DUBIAC: So who was Jose?

15 MR. MURRAY: Jose was the super helper.

16 ALJ DUBIAC: What do you mean a super
17 helper? You mean for a building?

18 MR. MURRAY: Yeah. For buildings
19 (inaudible).

20 ALJ DUBIAC: In that area, upper
21 Manhattan?

22 MR. MURRAY: Yes.

23 ALJ DUBIAC: Okay. And uh so you were
24 told by your manager?

25 MR. MURRAY: Yeah and my (inaudible)

1 Murray - Testimony

2 supervisor.

3 ALJ DUBIAC: That you could give uh
4 packages.

5 MR. MURRAY: Yes. I can trust these
6 people to get the packages off. Their main
7 concern was to get the packages off.

8 ALJ DUBIAC: All right. Well were these
9 packages all delivered to an address where he
10 was the supers' helper?

11 MR. MURRAY: Um, to different buildings
12 that he helped in?

13 ALJ DUBIAC: Yes.

14 MR. MURRAY: And some of them was his
15 that he ordered in his own name.

16 ALJ DUBIAC: How do you know that they
17 were addressed to um the building where he
18 worked?

19 MR. MURRAY: He would have receipts for
20 the customers that request for them to get
21 the packages. (inaudible) tracking numbers.

22 ALJ DUBIAC: Did he have receipts? At
23 all times, at all times that you gave him,
24 first of all, did you recognize the packages
25 of having cell phones in them?

1 Murray - Testimony

2 MR. MURRAY: Well, no.

3 ALJ DUBIAC: Okay.

4 MR. MURRAY: Not knowing that they were
5 all cell phones.

6 ALJ DUBIAC: All right. But at all the
7 times that you gave Jose packages, did he
8 have the receipts from customers?

9 MR. MURRAY: Mm hm.

10 ALJ DUBIAC: Yes? You have to speak.

11 MR. MURRAY: Yes ma'am. Yes ma'am.

12 ALJ DUBIAC: Okay. All right. Did you
13 feel that you could have been doing anything
14 wrong?

15 MR. MURRAY: No because I called and
16 spoke to my supervisor early on, say about
17 the beginning of 2006 when he was picking
18 them up from the neighbors after I delivered
19 them.

20 ALJ DUBIAC: Who was picking them up?
21 Jose?

22 MR. MURRAY: Jose.

23 ALJ DUBIAC: Okay. So you called your
24 supervisor.

25 ALJ DUBIAC: Mm hm.

1 Murray - Testimony

2 MR. MURRAY: And explained that to him
3 and he told me that there was nothing that we
4 can do with arrangements that customers make
5 outside of spending their money. So his main
6 concern was to get the packages off.

7 ALJ DUBIAC: So he said it was okay to
8 give to Jose?

9 MR. MURRAY: Yeah.

10 ALJ DUBIAC: And who was that? Who was
11 the supervisor?

12 MR. MURRAY: That was Ralph.

13 ALJ DUBIAC: Ralph?

14 MR. MURRAY: Yes.

15 ALJ DUBIAC: Who's Ralph?

16 MR. MURRAY: Ralph Carter was my road
17 supervisor.

18 ALJ DUBIAC: Okay. And when did he tell
19 you this?

20 MR. MURRAY: This was like the beginning
21 of me starting that area. I would say like,
22 it was still cold. That's...

23 ALJ DUBIAC: All right. Now, uh were
24 you arrested on charges?

25 MR. MURRAY: Yes.

1 Murray - Testimony

2 ALJ DUBIAC: Okay.

3 MR. MURRAY: They had me arrested.

4 ALJ DUBIAC: And what was the result of
5 that?

6 MR. MURRAY: Um, I'm waiting for it to
7 be dismissed.

8 ALJ DUBIAC: So they're still pending?

9 MR. MURRAY: Yeah. The first court date
10 was May...

11 ALJ DUBIAC: I don't need to know that.
12 I just need to know is it still pending?

13 MR. MURRAY: Yes.

14 ALJ DUBIAC: And you're saying it's
15 scheduled to be dismissed?

16 MR. MURRAY: August 23rd.

17 ALJ DUBIAC: What leads you to believe
18 it's going to be dismissed August 23rd?

19 MR. MURRAY: The notice that they gave
20 me.

21 ALJ DUBIAC: Who gave you?

22 MR. MURRAY: Uh, the court telling me I
23 don't have to come back unless they call.

24 ALJ DUBIAC: Let me see what you have.
25 All right. Well, it doesn't say that. It

1 Murray - Testimony

2 says if no action is taken by the district
3 attorney prior to the above date, the
4 (inaudible) will be dismissed and sealed.

5 ALJ DUBIAC: Right. My legal aid is
6 telling me that they haven't made any steps
7 or anything to go forward with the case and
8 it looks like a good case to be dismissed so...

9 ALJ DUBIAC: Okay. All right. So
10 anyway...

11 MR. MURRAY: (inaudible).

12 ALJ DUBIAC: But it's still pending?

13 MR. MURRAY: Yes.

14 ALJ DUBIAC: Okay. All right. I'd like
15 to make a copy of this. Uh, any objection to
16 it, any objection or comment to its receipt
17 into evidence?

18 MR. MURRAY: No.

19 ALJ DUBIAC: All right. This is uh
20 criminal court of the state of New York.
21 It's a note. It's on a form CRC5034295.
22 It's a one page document. I'm showing it to
23 Mr. Cleary. Any objection or comment to its
24 receipt into evidence?

25 MR. CLEARY: No ma'am.

1 Murray - Testimony

2 ALJ DUBIAC: I'll make, you need this.

3 Correct?

4 MR. CLEARY: Yes.

5 ALJ DUBIAC: I'll give it back to you.

6 So I'm just going to deem the copy marked as
7 exhibit 3 and it's received into evidence.

8 All right. Did you have any knowledge that
9 Jose um, that the cell phones that you gave

10 to Jose could have been a part of a um
11 fraudulent uh cell phone uh order or scheme?

12 MR. MURRAY: No. No.

13 ALJ DUBIAC: And you heard Mr. Cleary.

14 He testified that this would be outside the
15 employer's rules or regulations or procedures
16 to give one person um packages that were
17 delivered to other people? You heard him say
18 that. Correct?

19 MR. MURRAY: Yes.

20 ALJ DUBIAC: And was it outside those
21 procedures?

22 MR. MURRAY: No.

23 ALJ DUBIAC: It wasn't?

24 MR. MURRAY: No. I don't feel that it
25 was cause I feel I was doing my job due to...

1 Murray - Testimony

2 ALJ DUBIAC: No. I just want to know
3 are you familiar with the procedures for
4 delivering packages?

5 MR. MURRAY: Yes.

6 ALJ DUBIAC: And you're saying those
7 procedures permit you to give to one person?

8 MR. MURRAY: Customers come and pick up
9 from the truck.

10 ALJ DUBIAC: Is the answer yes or no?

11 MR. MURRAY: Yes. Yes.

12 ALJ DUBIAC: Okay. And you're saying
13 you also had approval from your supervisor?

14 MR. MURRAY: Yes.

15 ALJ DUBIAC: Okay. All right. Mr.
16 Cleary, any questions of the claimant?

17 MR. CLEARY: Yes.

18 ALJ DUBIAC: Questions now. Put it in
19 the form of a question. What is it?

20 MR. CLEARY: Was Jose the super of 508
21 West 190th Street?

22 ALJ DUBIAC: That's not a question.
23 That's a statement that you're making. You
24 can say isn't it true that. You've got to
25 put it in a question form.

1 Murray - Testimony

2 MR. CLEARY: Is it true...

3 ALJ DUBIAC: Isn't it true that...

4 MR. CLEARY: Isn't it, well, isn't it
5 true that Jose was not the super or the
6 super's helper at 508 West 190th Street?

7 ALJ DUBIAC: He already testified that
8 he was so that's repetitive. Any other
9 questions?

10 MR. CLEARY: How many buildings was the
11 Jose the super for or the super's helper for?

12 MR. MURRAY: He had a number of
13 different buildings that he helped.

14 MR. CLEARY: What buildings?

15 ALJ DUBIAC: Do you know how many there
16 were?

17 MR. MURRAY: No ma'am.

18 MR. CLEARY: Can you recall any of the
19 addresses that he was a super's helper for?

20 MR. MURRAY: Um, I believe 5, what was
21 that? 550 on 80th. On 88th Street I think
22 that was. The 556, 52. I think it was 54.
23 54 and 52. Those two are the buildings next
24 to him. He even helped on 18 um 9th Street.
25 I cannot remember all the building numbers

1 Murray - Testimony

2 off hand but he was a helper with different
3 buildings in the area.

4 ALJ DUBIAC: Any further questions?

5 MR. CLEARY: When you say that he had
6 receipts from customers, can you describe
7 what type of receipt it was?

8 MR. MURRAY: Just the receipts from the
9 store.

10 MR. CLEARY: From what store?

11 MR. MURRAY: I have no idea. Just a
12 printout. A receipt. A receipt when you go
13 and pay for something. A receipt.

14 ALJ DUBIAC: Any further questions?

15 MR. CLEARY: Um, did Ralph Carter ever
16 tell you that it was okay to deliver packages
17 from multiple addresses to one person on the
18 street?

19 ALJ DUBIAC: He just testified to that.

20 MR. MURRAY: (inaudible).

21 ALJ DUBIAC: Wait just a second. Just a
22 second. He just testified that Ralph Carter
23 gave him permission to give packages,
24 multiple packages to one person. Any other
25 questions?

1 Murray - Testimony

2 MR. CLEARY: No.

3 ALJ DUBIAC: In order to expedite his
4 deliveries. Is that correct?

5 MR. MURRAY: Yes. Give the packages
6 out.

7 ALJ DUBIAC: All right. Any other
8 questions? Okay. Then, uh I have nothing
9 further either so we can go to closing
10 argument. I don't feel it's necessary to
11 observe the video because the claimant
12 essentially has admitted that he did give the
13 packages to Jose so (inaudible) it would only
14 be repetitive to show the video. So I'm
15 going to dispense with that. All right. So
16 we're going to go to closing argument. Um,
17 before I do that, um I just want to go back
18 to the employer. Um, the claimant testified
19 that he was given permission by Ralph Carter,
20 a supervisor, um to give the packages to
21 Jose. Did he ever indicate that to you or to
22 anybody at the employer's office?

23 MR. CLEARY: Did he indicate that to us?

24 ALJ DUBIAC: Yes.

25 MR. CLEARY: He mentioned Ralph's name.

1 Murray - Testimony

2 ALJ DUBIAC: All right. Did you ever
3 talk to Ralph to see if this was true?

4 MR. CLEARY: Yes.

5 ALJ DUBIAC: What did he say?

6 MR. CLEARY: He said that he didn't uh
7 say that he could uh deliver multiple
8 addresses to one guy in the street.

9 ALJ DUBIAC: What did he say?

10 MR. CLEARY: He said he can leave
11 packages with supers for specific buildings
12 and he can deliver packages to customers in
13 the street who come up with i.d. matching the
14 cartons but he can't deliver multiple
15 addresses to supers in the street.

16 ALJ DUBIAC: Okay. But that would have
17 been in violation of the employer's policies.
18 Correct?

19 MR. CLEARY: Correct.

20 ALJ DUBIAC: Okay. All right. In other
21 words, the advice that he gave to the
22 claimant. That was in violation of the
23 employer's policies. Right?

24 MR. CLEARY: If...

25 ALJ DUBIAC: Delivering to customers in

1 Murray - Testimony

2 the street. Correct?

3 MR. CLEARY: Cause that's what he said.

4 Yes.

5 ALJ DUBIAC: Okay. Well, is that what
6 he said to you? Whatever he said to you, was
7 that, any of that in violation of the
8 employer's policies?

9 MR. CLEARY: What he said to me was not
10 in violation of our policy. No. What he
11 said to me...

12 ALJ DUBIAC: I thought you said that...

13 MR. CLEARY: What he said to me did not
14 match up with what Mr. Murray said.

15 ALJ DUBIAC: That's not what I'm asking
16 you.

17 MR. CLEARY: Okay.

18 ALJ DUBIAC: Anything that Mr. Carter
19 told you that he advised the claimant to do,
20 was any of it in violation of the employer's
21 policies?

22 MR. MURRAY: No.

23 ALJ DUBIAC: I thought you said that you
24 can't deliver something to someone in the
25 street.

1 Murray - Testimony

2 MR. CLEARY: If a customer approaches
3 the delivery vehicle...

4 ALJ DUBIAC: Mm hm.

5 MR. CLEARY: Looking for their own
6 package...

7 ALJ DUBIAC: Right.

8 MR. CLEARY: And they have
9 identification that matches the package...

10 ALJ DUBIAC: Mm hm.

11 MR. CLEARY: It's okay to deliver.

12 ALJ DUBIAC: Okay. All right. Mr. um
13 Murray, any questions of Mr. Cleary?

14 MR. MURRAY: No ma'am.

15 ALJ DUBIAC: Okay. Then we're going to
16 closing arguments. I'm going to let um Mr.
17 uh Murray go first. Do you wish to make a
18 closing argument?

19 MR. MURRAY: Pertaining?

20 ALJ DUBIAC: Why you feel you should win
21 this hearing.

22 MR. MURRAY: Well because I was, because
23 I was arrested. I was falsely accused. I
24 spent 7 days in jail for something that I did
25 not have no parts of or no knowledge of and I

1 Murray - Testimony

2 was released. There was no bail, no nothing.

3 I haven't been called back down for this
4 criminal case or anything and I feel I should
5 have my unemployment until we go back to um...

6 ALJ DUBIAC: Criminal court?

7 MR. MURRAY: No. Not criminal court.

8 ALJ DUBIAC: Arbitration?

9 MR. MURRAY: Yes. Arbitration. That's
10 the word I was looking for because um I was
11 falsely, my job was falsely taken away.

12 ALJ DUBIAC: Okay. Mr. Cleary, any
13 questions of the claimant?

14 MR. CLEARY: No.

15 ALJ DUBIAC: Do you wish to make a
16 closing argument Mr. Cleary?

17 MR. CLEARY: Yes.

18 ALJ DUBIAC: Go ahead.

19 MR. CLEARY: Mr. Murray was discharged
20 due to his uh involvement in a scheme to
21 obtain fraudulently ordered phones. We
22 confirm that the phones were fraudulently
23 ordered by contacting Sprint security. The
24 methods that he used to deliver the phones
25 bypassed standard UPS procedures.

1 Murray - Testimony

2 Confirmation with on road supervisor who
3 trained and supervised Mr. Murray determined
4 that he was not given authorization to
5 deliver the packages as such. Mr. Murray
6 along with two other individuals were
7 arrested that day by the Manhattan...

8 ALJ DUBIAC: Well, that's new testimony.
9 There was no prior testimony...

10 MR. CLEARY: Okay.

11 ALJ DUBIAC: About two other individuals
12 being arrested. Just stick to the testimony.
13 Make your argument based on the testimony
14 that's been presented. Anything further?

15 MR. CLEARY: That's pretty much it then.

16 ALJ DUBIAC: I'm sorry?

17 MR. CLEARY: That's pretty much it then.

18 ALJ DUBIAC: Okay. All right. Any
19 other questions of Mr. Cleary?

20 MR. MURRAY: No ma'am.

21 ALJ DUBIAC: All right. Then everybody
22 can leave. The hearing is closed. Have a
23 good day. I'm going to meet the claimant in
24 the reception room to give you back your
25 document after I copy it.

1 Murray - Testimony

2 MR. MURRAY: Okay.

3 ALJ DUBIAC: Going off the record.

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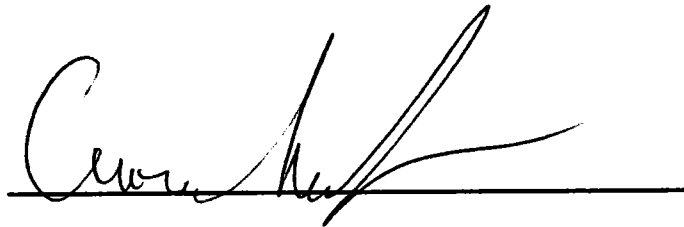
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This is to certify that I have typed the above
record from a cassette (s) produced from an
electronic sound recording system in the State of
New York and that to my best knowledge and belief
the above record was typed by me is a true and
accurate record of the audiotape contents of the
cassette (s).

A handwritten signature in black ink, appearing to read 'Cinzia Lister', is written over a horizontal line.

Cinzia Lister

THE MECHANICAL SECRETARY, INC.
108-16 72nd Avenue
Forest Hills, New York 11375

Date cassette was transcribed:

August 31, 2007

EXHIBIT F



MARGARET O'BRIEN
CHIEF ADMINISTRATIVE LAW JUDGE

STATE OF NEW YORK
UNEMPLOYMENT INSURANCE APPEAL BOARD
ADMINISTRATIVE LAW JUDGE SECTION
P O BOX 697
NEW YORK NY 10014-0697
(212) 352-6982

LAURANCE I PAYER
LEONARD R SHAPIRO
HOWARD M WEISELES
ALTERIO A COLETTI
SENIOR ADMINISTRATIVE LAW JUDGE

PRINCIPAL ADMINISTRATIVE LAW JUDGE

**DECISION AND NOTICE OF DECISION
DECISIÓN Y AVISO DE LA DECISIÓN TOMADA**

A L J Case No 007-13959
IN THE MATTER OF

Mailed and Filed

JUL 30 2007

KEITH L MURRAY
2116 CROTONA PKWY #3D
BRONX NY 10460

UNITED PACEL SERVICE INC
180 CANAL ST
BRONX NY 10451

TALX UCXPRES
PO BOX 283
ST LOUIS MO 63166-0283

Department of Labor Office 801

Hearing Requested July 02, 2007

PLEASE TAKE NOTICE that this decision has been duly mailed on the date listed above. If you appeared at the hearing and are not satisfied with this decision, you may appeal within **TWENTY DAYS** from the date this decision was mailed. Any party who failed to appear at the hearing has the right to apply to reopen the case. For the application to be granted, the party must apply within a reasonable time and must establish good cause for its failure to appear. **READ IMPORTANT INFORMATION ON REVERSE SIDE.**

POR FAVOR TOMAR NOTA que esta decisión ha sido debidamente enviada por correo en la fecha que aparece arriba. Si usted asistió a la audiencia y no está satisfecho con la decisión, usted puede apelar dentro de los **VEINTE DIAS** a partir de la fecha en que esta decisión fue enviada por correo. Cualquiera de las partes que falla en comparecer a la audiencia, tiene derecho de aplicar para que reabran su caso. Para que la apelación sea aceptada, la parte interesada debe aplicar dentro de un período de tiempo razonable y debe establecer buena causa por no haber comparecido a la audiencia. **LEA INFORMACIÓN IMPORTANTE AL REVERSO.**

**DOCUMENTO IMPORTANTE PUEDE OBTENER UNA TRADUCCIÓN DEL MISMO LLAMANDO
AL 1-888-209-8124 (FUERA DEL ESTADO DE NUEVA YORK 1-877-358-5306)**

ISSUES

Loss of employment through misconduct
Employer's objection to claimant's entitlement

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by the employer cannot be used toward the establishment of a claim for benefits.

NOTICE OF DECISION**CLAIMANTS****IF YOU DISAGREE WITH THIS DECISION, YOU HAVE A RIGHT TO APPEAL TO THE UNEMPLOYMENT INSURANCE APPEAL BOARD**

Parties may be represented by lawyers or other persons of their choice on appeal to the Appeal Board. For representing a claimant, a lawyer or an agent registered by the Appeal Board may charge a fee. The fee must be approved by the Appeal Board before payment may be accepted by such lawyer or agent. No other person may charge a fee for representing a claimant. If you do not have enough money to hire a lawyer or registered agent, you may be able to get one free through your local Legal Aid Society or Legal Services Program.

TO APPEAL A DECISION

1. Continue to follow all instructions from the Unemployment Insurance office where you originally filed your claim and to certify for benefits as long as you are unemployed and claiming benefits. This will protect your rights to any benefits you claim.
2. Within twenty (20) days of the date printed on the face of this decision, mail a letter to the office where you originally filed your claim or to the Appeal Board at P O Box 15126, Albany, New York 12212-5126, or fax your appeal to the Appeal Board at (518) 402-6208. Please state that you wish to appeal and the reasons for your appeal. Include your ALJ Case Number (found just above your name on the face of the Notice of Decision) and a copy of the Notice of Decision.
3. Claimants who appeal are not required to pay a deposit on filing an appeal.

EMPLOYERS

If you wish to appeal this decision, you may file a notice of appeal within twenty (20) days from the date printed on the face of this decision to the office where the claim was originally filed and which issued the initial determination, or to the Unemployment Insurance Appeal Board at P O Box 15126, Albany, New York 12212-5126, or you may fax your notice of appeal to the Appeal Board at (518) 402-6208. Such notice of appeal should include the A L J Case Number (found on the face of this Notice of Decision), the reason(s) for the appeal and a copy of the Notice of Decision.

ALL PARTIES WILL RECEIVE A NOTICE OF RECEIPT OF APPEAL DIRECTLY FROM THE APPEAL BOARD AFTER ANY APPEAL IS MADE.

INSTRUCCIONES A LOS RECLAMANTES**RECLAMANTES**

SI NO ESTÁ DE ACUERDO CON ESTA DECISIÓN, USTED TIENE DERECHO DE APELARLA A LA JUNTA DE APELACIONES DEL SEGURO POR DESEMPLEO.

Las partes si lo desean, pueden estar representadas por abogados u otras personas que ellos seleccionen en la apelación a la Junta de Apelaciones (Appeal Board). Un abogado o un agente que esté registrado por la Junta de Apelaciones, puede cobrarse honorarios por representarle. Estos honorarios deben ser aprobados por la Junta de Apelaciones antes que el pago pueda ser aceptado por dicho abogado o agente registrado. Ninguna otra persona podrá cobrar honorarios por representar al reclamante. Si usted no tiene suficiente dinero para contratar a un abogado o un agente registrado, puede conseguir uno gratis a través de la Sociedad de Asistencia Legal (Legal Aid Society) o el Programa de Servicios Legales (Legal Services Program).

PARA APELAR LA DECISIÓN

1. Continúe siguiendo todas las instrucciones de la oficina del Seguro por Desempleo (Unemployment Insurance) donde usted presentó su reclamo originalmente y para certificar por los beneficios mientras permanezca desempleado y esté reclamando beneficios. Esto protegerá su derecho a recibir cualquier beneficio que reclame.
2. Antes de cumplirse veinte (20) días de la fecha que aparece al frente de esta decisión, envíe una carta a la oficina donde presentó originalmente su petición o al Appeal Board a P O Box 15126, Albany, New York 12212-5126, o envíe por fax su apelación al Appeal Board al (518) 402-6208. Por favor, explique que desea apelar y las razones que tiene para hacerlo. Incluya su número de caso ALJ (lo encontrará justo encima de su nombre al frente de este Aviso de Decisión) y envíe una copia de este Aviso de Decisión.
3. Los reclamantes no necesitan depositar dinero para poder apelar su caso.

TODAS LAS PARTES RECIBIRÁN UN AVISO DE RECIBO DE APELACIÓN DIRECTAMENTE DE LA JUNTA DE APELACIONES DESPUÉS DE QUE SU PETICIÓN SEA RECIBIDA.

A L J Case No 007-13959

KEITH L MURRAY

Page 2

A hearing was held at which testimony was taken. There were appearances by the claimant and on behalf of the employer.

FINDINGS OF FACT Claimant was employed as a delivery driver for a transportation company for approximately two years until February 2, 2007. Because the employer believed that claimant participated in a scheme to obtain and deliver fraudulently ordered cell phones, he was discharged from his employment on that date. Claimant did not commit such acts. Criminal charges against claimant are pending.

OPINION Pursuant to Labor Law § 593 (3), a claimant is disqualified from receiving benefits after having lost employment through misconduct in connection with that employment. Pursuant to Labor Law § 527, the wages paid in such employment cannot be used to establish a future claim for benefits.

The credible evidence establishes that claimant was discharged because the employer believed that he participated in a scheme to obtain and deliver fraudulently ordered cell phones. As claimant did not commit such acts, on the record before me, I find that he committed no act of misconduct that resulted in his discharge. In reaching this decision, I do not find the employer's testimony that claimant violated the employer's delivery procedures to be significant as there was no testimony that claimant was discharged for such reason alone. Accordingly, I conclude that claimant is not subject to any disqualification and he is entitled to receive benefits.

DECISION The employer's objection is overruled.

The initial determination is sustained.

The claimant is allowed benefits with respect to the issues decided herein.


/s/ Diane Dubiac

Administrative Law Judge

CONFIDENTIAL
UPS 000663

EXHIBIT G

Richard J. Rabin (RR-0037)
Evandro C. Gigante (EG-7402)
AKIN GUMP STRAUSS HAUER & FELD LLP
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New York, New York 10022
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egigante@akingump.com

Attorneys for Defendant United Parcel Service, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
KEITH MURRAY,

Plaintiff,

-against-

UNITED PARCEL SERVICE OF AMERICA, INC.,
UNITED PARCEL SERVICE, INC., AND UNITED
PARCEL SERVICE CO.,

Defendants.
----- X

NO. 08-CV-02160 (LAK)

**DEFENDANT'S SECOND SET
OF DOCUMENT REQUESTS TO
PLAINTIFF**

----- X
UNITED PARCEL SERVICE, INC.,

Third-Party Plaintiff,

-against-

JOSE BEATO,

Third-Party Defendant.
----- X

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Local Rules
of the United States District Court for the Southern District of New York, Defendant/Counter-

Plaintiff United Parcel Service, Inc. ("UPS"), by and through its attorneys Akin Gump Strauss Hauer & Feld LLP, request that Plaintiff Keith Murray ("Plaintiff" or "Murray") produce and permit UPS to inspect and copy the documents described below at Akin Gump Strauss Hauer & Feld LLP, 590 Madison Avenue, 20th Floor, New York, New York, 10022, within thirty (30) days from the date of service hereof.

DEFINITIONS

1. "Person" shall be deemed to include both the singular and the plural and means any natural persons, corporations, partnerships, organizations, associations, or legal or governmental entities or associations.
2. "Complaint" means or refers to the First Amended Complaint filed in the above-captioned action by Plaintiff Keith Murray.
3. "Plaintiff" and "Murray," as well as the Plaintiff's full or abbreviated name and a pronoun referring to the Plaintiff, mean or refer to Keith Murray, including his agents, servants, employees, attorneys, accountants, and any other persons acting or purporting to act on his behalf.
4. "Defendant," or "UPS" as well as the Defendant's full or abbreviated names and pronouns referring to the Defendant, mean or refer to United Parcel Service, Inc., including their respective officers, directors, agents, servants, employees, attorneys, accountants, corporate parents, subsidiaries, affiliates, divisions, predecessors and successors, and any other persons acting or purporting to act on their behalf.
5. "Third-Party Defendant or "Beato," as well as the Third-Party Defendant's full or abbreviated name and a pronoun referring to the Third-Party Defendant, mean or refer to Jose

Beato, including his agents, servants, employees, attorneys, accountants, and any other persons acting or purporting to act on his behalf.

6. “Hipolito Garcia” or “Garcia”, as well as Garcia’s full or abbreviated name, mean or refer to Hipolito Garcia, including his agents, servants, employees, attorneys, accountants, and any other persons acting or purporting to act on his behalf.

7. The phrase “possession, custody, or control” means actual or constructive possession, custody, or control. Any document which is not in a person’s immediate physical possession, but which the person has a right to compel a third person to produce, or which is otherwise subject to the control of the person in question, is within that person’s “possession, custody, or control,” including, for example, any document located or kept in that person’s office, residence or vacation home, in any other place that person has access, or in the possession of that person’s agents, accountants, attorneys, or representatives of any kind.

8. The term “communication” shall be construed to mean the transmittal of information (in the form of facts, ideas, data transmission, inquiries or otherwise), including, but is not limited to, any conversations, meetings, discussions, or other forms of verbal exchange, whether in person or by telephone, and any documents, writings, or correspondence.

9. The term “document” shall be synonymous in meaning and equal in the scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, but not limited to, all original, non-identical copies and drafts of correspondence, communications, letters, papers, contracts, invoices, purchase orders, agreements, records, reports, books, summaries of records of communications, diaries, notes, messages, facsimiles, memoranda, minutes, graphs, spreadsheets, diagrams, valuations, appraisals, tape recordings, and computer data. The term “document” shall further include, without limitation, any electronically stored information,

electronic and magnetically stored forms of data in any format or file type, including electronic mail. Each non-identical copy of a document is a separate document to be produced. Each document that is attached by staple, clip or otherwise to a document requested herein, or referred to as an exhibit, appendix, schedule, amendment, rider or supplement to a requested document, shall also be produced (attached in the same manner as the original) regardless of whether the production of that document is otherwise requested herein. Each request herein for documents to be produced requires production of the documents in their entirety without abbreviation or expurgation.

10. The term “relating to” means relating to, concerning, regarding, referring to, describing, evidencing, or constituting.

11. The term “all” means each and all.

12. The term “any” means any and all.

13. The term “each” means each and all.

14. The terms “between” and “among” shall be construed as between or among.

15. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

16. The use of the singular form of any word includes the plural and vice versa.

INSTRUCTIONS

1. Plaintiff is requested to produce all documents described below, wherever located, that are in his possession, custody or control, or in the possession, custody or control of any of his agents, servants, employees, attorneys, accountants, or other persons acting or purporting to act on his behalf, at the offices of Akin Gump Strauss Hauer & Feld LLP, 590 Madison Avenue,

20th Floor, New York, New York, 10022, within thirty (30) days from the date of service hereon. The inspection and copying of the documents will continue from day to day until completed.

2. Documents shall be produced in an order corresponding to each paragraph of this document request, or, in the alternative, they may be produced in the same order in which they are maintained in the ordinary course of business.

3. The time period covered in this document request begins on January 1, 2006, and carries through to the date of production of the requested documents set forth in paragraph 1 of these Instructions, unless otherwise specifically indicated. This is a continuing request. Any document created, obtained or located after the date of production that would have been produced had it been available or had its existence been known at or prior to that time should be produced immediately.

4. Any copy of a document that varies in any way from the original or from any other copy of the document, whether by reason of handwritten or other notation or any omission, constitutes a separate document and must be produced, whether or not the original of such a document is within Plaintiff's possession, custody or control.

5. If Plaintiff refuses to produce any requested document under a claim of attorney-client privilege, work product privilege, or any other privilege, Plaintiff is requested to submit for each document withheld a written statement that identifies: (a) the privilege or other asserted basis for withholding the document; (b) the nature and general topic of the document; (c) the person who prepared the document and any persons to whom the document was sent or disclosed; (d) any person who has seen or had possession of the document; and (e) the dates on which the document was prepared, transmitted and received.

6. If any document requested herein was formerly in the possession, custody, or control of Plaintiff and has been lost or destroyed, Plaintiff is requested to submit a written statement that identifies: (a) the nature of the document and its contents; (b) the person who prepared the document and any person to whom the document was sent or disclosed; (c) any person who has seen or had possession of the document; (d) the dates on which the document was prepared, transmitted and received; (e) the dates on which the document was lost or destroyed and, if destroyed, the conditions of and reasons for such destruction and the persons requesting and performing the destruction; and (f) any person with knowledge of the contents or any portion of the contents of the document.

DOCUMENT REQUESTS

1. All telephone records (including telephone bills) from Plaintiff's home telephone for all residences at which Plaintiff has resided since January 1, 2006 to the present, including but not limited to his residence at 2116 Crotona Parkway, Bronx, New York 10460.

2. All telephone records (including telephone bills) for all cellular phones Plaintiff has owned, used or maintained since January 1, 2006 to the present.

3. All documents relating to any correspondence or communications between Plaintiff and Jose Beato, including but not limited to telephone records, cellular phone records, text messages, electronic communications (including e-mail and instant messages), diaries, notes, as well as all other forms of written and/or electronic communication.

4. All documents relating to any correspondence or communications between Plaintiff and Hipolito Garcia, including but not limited to telephone records, cellular phone records, text messages, electronic communications (including e-mail and instant messages), diaries, notes, as well as all other forms of written and/or electronic communication.

5. All documents relating to Plaintiff's personal and business contacts, including but not limited to all phone books, address books, telephone contacts, as well as phone numbers and contact information stored in Plaintiff's cellular telephone, computer and other electronic devices.

6. All documents relating to any correspondence or communication between Plaintiff and Sprint/Nextel, including but not limited to telephone records, home or cellular phone records, electronic communications, diaries, notes, as well as all other forms of written and/or electronic communication.

7. All documents relating to any correspondence or communication between Plaintiff and Asurion Corp., including but not limited to telephone records, home or cellular phone records, electronic communications, diaries, notes, as well as all other forms of written and/or electronic communication.

Dated: New York, New York
July 18, 2008

AKIN GUMP STRAUSS HAUER & FELD LLP

By: 

Richard J. Rabin (RR-0037)
Evandro C. Gigante (EG-7402)
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